

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Petition of)	
Competitive Energy Services)	
Requesting that LDCs be Required)	
to Make Available to Licensed Gas)	D.T.E. 04-84
Agents and Suppliers Certain C&I)	
Customer Information)	
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COMMENTS OF KEYSpan ENERGY DELIVERY NEW ENGLAND

I. INTRODUCTION

KeySpan Energy Delivery New England (“KeySpan” or the “Company”)¹ hereby submits its comments on the Letter Request of Competitive Energy Services Massachusetts, LLC (“Competitive Energy” or the “Petitioner”). Competitive Energy states that it is a licensed natural gas and electric broker in Massachusetts serving commercial and industrial (“C&I”) customers. By letter dated July 14, 2004, the Petitioner requested that the Department of Telecommunications and Energy (the “Department”) direct local gas distribution companies (“LDCs”) to make available certain customer information. Competitive Energy asserts that significant institutional barriers persist with respect to the migration of small natural gas customers to the competitive market (Letter Request at 1). Therefore, the Petitioner requests that the LDCs provide, in electronic format on a quarterly basis, the names, addresses, usage levels and assigned capacity of all C&I customers (id.).

¹ The three Massachusetts local gas distribution companies that do business as KeySpan Energy Delivery New England are Boston Gas Company, Colonial Gas Company and Essex Gas Company.

II. DISCUSSION

KeySpan objects to the Petitioner's request for several reasons. First, Competitive Energy fails to present any evidence that competition would be increased for small C&I customers if the request is granted. Moreover, Competitive Energy has failed to provide any justification for the Department to require LDCs to deviate from the Department's rules at 220 C.M.R. 14.00 et seq. and from the LDCs' currently approved Terms and Conditions for gas distribution service which were thoroughly reviewed by the natural gas unbundling collaborative² and approved by the Department in Natural Gas Unbundling, D.T.E. 98-32-A, B, C, D and E (1998 through 2000).

Second, Petitioner's attempt to rely on the procedures in place in the electric industry as justification for its request to make competitively sensitive customer information available to retail agents and suppliers without customer consent is misplaced. Specifically, petitioner fails to recognize that with regard to electric service there is effectively no alternative for the customer. In contrast, natural gas commercial customers often have competitive alternatives to natural gas as an energy source. And, oftentimes, the same retail agents and suppliers of natural gas are engaged in the marketing of those alternatives, especially fuel oil. Disclosure of the information requested by the petitioner potentially would enable retail agents and suppliers to use KeySpan's own customer lists and customer specific information to offer fuels that compete with natural gas to the detriment of KeySpan's other ratepayers. Finally, the petitioner's request would place an unnecessary and costly administrative burden on the LDCs for which the LDCs currently have no recovery mechanism. Each of these concerns is discussed below.

² The participants in the collaborative were marketers of natural gas and related services, LDCs, interstate natural gas pipelines, representatives of several customer groups, various government agencies, and the Department.

A. Competitive Energy Has Failed to Show Good Cause Pursuant To 220 C.M.R § 14.07 For A Waiver From The Department's Customer Information Authorization Requirement

The Department's rules for electric restructuring allow the Department to grant exceptions from the restructuring rules, 220 C.M.R 11.08, as do the rules for Unbundling of Services Related to the Provision of Natural Gas, 220 C.M.R. §14.07. Both of these sections, however, require that the Department grant a waiver for good cause shown by a petitioner (emphasis added).³

In Competitive Market Initiatives for Electric Restructuring, D.T.E. 01-54-A (2001), the Department granted an exception to 220 C.M.R § 11.05(4) that requires that a retail agent or supplier obtain customer authorization prior to the release of customer usage information. In that formal investigation, the Department found good cause to grant an exception as required by the rule. Competitive Market Initiatives for Electric Restructuring at 13. The Department allowed certain customer information, including usage, to be made available to electric retail agents and suppliers. The Department also recognized that for some customers information regarding their electric usage might reveal proprietary information about the customers' business practices. To address this concern, the Department required electric utilities to put in place an opt out provision for customers who did not want to have the information made available. D.T.E. 01-54-A at 12. Even with this effort to promote increased competition in the electric supply market, especially for small C&I and residential customers, there is only a small percentage of small C&I customers who have chosen competitive generation. The most up-to-date information provided on the Massachusetts Division of Energy Resources' website indicates that as of November 2004 only seven percent of small C&I customers have

³ While the two rules also allow for the Department to grant a waiver on its own motion, the issue in this case has been raised by the Petitioner.

selected competitive generation. This modest percentage of customers converting to competitive electric generation does not support Competitive Energy's assertion that LDC provided C&I information would 'improve markedly' the competitive market for natural gas.

In the instant case, Competitive Energy as the Petitioner has failed to demonstrate good cause for a waiver of the Department's rules as they relate to natural gas unbundling. Mere assertions that a waiver will somehow result in increased competition without any supporting evidence should not and cannot be the vehicle for changing reasoned Department decision making or to grant a waiver to the Department's rule that requires a demonstration of good cause by a petitioner. The Department has found that good cause is determined in the context of an underlying statutory or regulatory requirement and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party. Boston Edison Company, D.P.U. 90-355-A (1992) and Re Mass Migration of Telecommunications Service, D.T.E. 02-28 (2002). In the instant proceeding, Competitive Energy has not addressed the interests of the C&I customers and the LDCs. Therefore, the Petitioner has failed to meet the Department's standard to demonstrate good cause.

B. Competitive Energy's Comparison of the Electric and Natural Gas Markets is Misplaced

Competitive Energy's request relies in part on the Department's requirement that investor owned electric utilities provide to Massachusetts' licensed retail agents and suppliers the names, addresses and usage levels of all C&I customers. What Competitive Energy fails to recognize is the differences between the electric and natural gas industries. The primary difference is that no alternative exists -- there is no alternative to electric power. A retail agent or supplier of electric power cannot substitute another product or

service. There are, however, alternatives to natural gas. There is nothing to prevent a retail agent or supplier of natural gas from using KeySpan's customer lists and the usage information requested by Competitive Energy to switch customers to a competitive fuel to the detriment of KeySpan's remaining ratepayers or to use the information to market other ancillary services. Such a result would be contrary to the intent of the rules negotiated through the natural gas unbundling collaborative and approved by the Department in D.T.E. 98-32-A. The parties to D.T.E. 98-32-A specifically negotiated the provisions of section 24.4 and 24.5 of the Terms and Conditions of Distribution Service to protect customers from these types of unsolicited marketing practices.

C. Competitive Energy's Request Would Create an Unnecessary Administrative Burden on LDCs

If the Department were to approve the Letter Request of Competitive Energy, the decision would result in additional costs and unnecessary burden on the LDCs. KeySpan presently provides to marketers, at their request and with the proper customer authorization, the following customer information: rate classification, citygate receipt point,⁴ billing cycle, capacity assignment volume, and twelve months of historical usage. This information is provided to the marketers on the same day as requested. The information provided allows marketers to perform an accurate pricing analysis for potential customers. To make this information generally available to all marketers without customer consent would require technical changes to the Company's billing and reporting systems. In addition, new customer service procedures would have to be implemented to communicate to customers the Department's directive to release their

⁴ The interstate pipeline route may result in different pricing.

information and to track customers who request to opt out of the disclosure process and thereby avoid unsolicited marketing. As noted above, Competitive Energy has provided no justification for these additional costs and administrative burden. Nor, has Competitive Energy offered any evidence to suggest that the current rules are inhibiting competition in the retail market for natural gas.

III. CONCLUSION

There are no grounds upon which to grant the Letter Request filed by Competitive Energy. Rather, KeySpan suggests that the Department continue to require LDCs to provide usage history and current billing information if authorized by a customer pursuant to the Department's rules, 220 C.M.R. 14.04(4), and in the Model Terms and Conditions agreed to by the marketers and the LDCs and adopted by the Department in Gas Unbundling, D.T.E. 98-32-A (1998).⁵

Respectfully submitted,

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⁵ A customer is deemed to have authorized access to usage information by providing a retail agent or supplier with their account number and meter number.